



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 5117-99
12 November 1999

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Your requests to remove your service record page 11 entry dated 21 May 1997, the Director, Staff Noncommissioned Officer Academy letter dated 29 April 1997, and the nonpunitive letter of reprimand dated 21 May 1997 were not considered, since they are not in your Official Military Personnel File, and there is no indication that they appear in your Service Record Book.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 5 August 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in concluding that your contested fitness report should stand. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

5117-99

IN REPLY REFER TO:
1610
MMER/PERB
AUG 5 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] s DD Form 149 of 26 May 99
(b) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 4 August 1999 to consider Staff Sergeant [REDACTED] s petition contained in reference (a). Removal of the fitness report for the period 970102 to 970205 (TD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner believes the report was based on factual inaccuracies, erroneous perceptions, and not founded in fact (but rather unsubstantiated allegations). To support his appeal, the petitioner directs the Board's attention to the fitness report at issue (specifically the statement of rebuttal), a copy of his fitness report for the period 960608 to 961101 (GC), and statements on his behalf from Captain [REDACTED] and Master Sergeant [REDACTED].

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The issues and concerns which the petitioner surfaces in reference (a) are the same as the ones he raised in his official statement of rebuttal. At that time, Sergeant Major [REDACTED] (the Reviewing Officer) more than sufficiently and thoroughly addressed all aspects of the situation and placed in into its proper perspective, albeit concurring in the Reporting Senior's evaluation and the decision to disenroll the petitioner from Career Course 2-97.

b. In his role as counter for sit-ups during the Physical Fitness Test (PFT), the petitioner denies furnishing the count on Staff Sergeant [REDACTED] (as SNCO Academy PFT procedures required). His claim is that Staff Sergeant [REDACTED] provided the scorekeeper with her sit-up total. This begs the question: "Why would the scorekeeper have accepted the count from Staff

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Sergeant [REDACTED] when to do so was contrary to established procedures?" Nevertheless, written statements by Master Sergeant [REDACTED] and Gunnery Sergeant [REDACTED] on 31 January 1997, the day the PFT took place, clearly say the petitioner provided the score.

c. Nowhere does the petitioner document or corroborate that he refused nonjudicial punishment (NJP) and demanded a court-martial. In fact, nowhere is it documented that any superiors contemplated sending the matter to NJP. Regardless, as [REDACTED] General [REDACTED] stated in his review, any decision to pursue such action is a Commanding Officer's decision -- certainly not the petitioner's.

d. The number of iterations on any given report is not germane since it is the responsibility of the reporting officials to ensure accuracy prior to submission to this Headquarters. A review of the three copies furnished with reference (a) are, in essence, the same.

e. The advocacy letters from Master Sergeant [REDACTED] and Captain [REDACTED] have no bearing on the issues concerned in the challenged fitness report. Neither Marine was present for the reporting period, nor were they involved in the report itself.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps